

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH COLE PRODUCTIONS (LIC), INC. and
KENNETH COLE PRODUCTION, INC.

Plaintiff,

v.

REACTION and MATTHEW CHO,

Defendant.

X

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: Case No. 08-cv-5218-

: AKH

:

: ECF CASE

:

: JURY TRIAL

: DEMANDED

:

X

**DECLARATION OF STEPHEN G. WARD IN SUPPORT
OF PLAINTIFFS' MOTION FOR CONTEMPT**

1. I am the President of Trademark Associates of NY, Ltd. ("TA"). I make this declaration upon my own personal knowledge and based upon my personal review of the relevant documents and things.
2. TA is a global investigations firm. TA was formed in 1999 as a general investigations firm; however, over the years, we have honed our skills and focused our resources on becoming a leader in Intellectual Property (IP) rights protection and complex litigation. TA handles all aspects of IP investigations, including counterfeit identification investigations, confirming the actual use, regions of trade, date of first use and scope of use of trademarks, securing samples of goods bearing target trademarks, and conducting site inspections.
3. On or about May 20, 2008, TA was contacted by Lackenbach Siegel, LLP ("Lackenbach"), counsel for the plaintiffs ("Plaintiffs") in the above-captioned action. Lackenbach requested that TA conduct an actual use investigation to determine if the defendants ("Defendants") in the above-

captioned action were selling goods which infringed Plaintiffs' REACTION and RXN trademarks. I personally headed the investigative team responsible for this assignment.

4. TA was advised by Lackenbach that Plaintiffs believed Defendants' infringing goods were available for sale via the third-party website www.trendbytes.com. After investigation of the website, TA purchased the subject goods. Based on TA's investigations, TA determined to the best of its knowledge that trendbytes.com does not actually stock any of the goods it sells; rather, upon the placement of an order with trendbytes.com, trendbytes.com merely brokers the sale between the seller and the buyer. Upon receipt of the goods, namely women's clothing, TA confirmed that the goods bore the REACTION and/or RXN trademarks. TA then forwarded the goods to Lackenbach, which is now in possession of the goods. After Lackenbach received the goods, Lackenbach filed the above-captioned trademark infringement suit on behalf of Plaintiffs.
5. TA was subsequently advised by Lackenbach that the trademark infringement suit by Plaintiffs against Defendants was resolved by way of a Consent Judgment, Order and Permanent Injunction (the "Injunction"). Thereafter, on or about August 20, 2008, Lackenbach retained TA to conduct additional investigations to determine if Defendants were still using the REACTION and RXN trademarks in violation of the Injunction. More specifically, Lackenbach asked TA to determine if the infringing goods were still being offered for sale and sold via the www.trendbytes.com website and to conduct

an investigation of Defendants' place of business to determine if the infringing signage was still in use, whether the infringing goods were still displayed and offered for sale, and whether Defendants were still making use of the REACTION and/or RXN trademarks in any way. Again, I personally headed the investigative team responsible for this assignment.

6. With respect to the sale of goods via www.trendbytes.com, TA successfully placed an order for goods bearing the REACTION trademark. That is, the order was placed, the credit card charged, and the order is pending shipment. Though TA has not yet received the goods, the process and timing is consistent with the first order TA placed via trendbytes.com.
7. With respect to the onsite investigation, TA dispatched an investigator to Defendants' business address. TA determined that Defendants are still using the REACTION and/or RXN marks in numerous ways which appear to violate the Injunction. More specifically, on Friday, August 22, 2008, a TA agent drove to Defendants' business address. Defendants' business is located on the 3rd floor of a medium sized three-story mall. The directory on the 1st floor still showed the business name "REACTION" indicating its location in unit S15. Unit S15 is a small shop with glass panels in the front, located in the middle of the 3rd floor. There was a large "REACTION" sign above the entrance door and four large "REACTION" logos on the front glass panels. The TA agent entered the store and upon examination determined that several of the clothing items hanging on the walls had "RXN" cloth labels sewn on the inside of the garments and "REACTION" tags attached to the outside.


Upon making contact with an unidentified employee, the TA agent was told that the store was a wholesale outlet and that any of the clothing items on display could be purchased for between \$8.00 and \$12.00. During a conversation with the employee, the TA agent was told that Defendants would be receiving a new shipment of REACTION clothing from Las Vegas in two weeks. The employee advised that he did not have brochures or other literature, but did give the TA agent two business cards with "REACTION" in large letters on both of them. One card, which is believed to be the owner's, had the name Gavin Lee on it, with the email address, reactionwear@hotmail.com. The other card had the Website www.fashiongo.net/reaction on it, with the Email address, reaction@fashiongo.net. The website displays clothing offered under the REACTION trademark.

8. The full results of TA's investigations are set forth in more detailed in a written report. A true and accurate copy of the report is attached hereto as Exhibit 1.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2008 in New York, New York.

Respectfully submitted:



Stephen G. Ward, President

EXHIBIT 1



PRIVATE AND CONFIDENTIAL

Date: August 26, 2008

INVESTIGATION REPORT

File No.: 12687-B IPLBS

Your File No.: REACTION

Subject: Conduct in-use investigation of the online company selling REACTION clothing. Secure samples for counsel and identify the seller and manufacturer of the goods.

Nature of Investigation: Use Investigation

**Requester: Robert Golden, Esq.
Lackebach Siegel LLP
One Chase Road
Scarsdale, New York 10583**

SITUATION:

Counsel requested that we investigate the Website www.trendbytes.com. We were to confirm that the site is no longer selling REACTION products at this time. We were also asked to send an undercover agent to the address secured for the company in question to confirm that they are no longer using the REACTION name on their products and in their stores.

IDENTITY/LOCATION:

Upon receipt of the REACTION goods, we found that the goods were shipped from REACTION/Matthew Cho. We noted a contact address of 1015 S. Crocker Street, Unit S15, Los Angeles, California 90021. A reach number was provided of (213) 742-9885. The number was traced and found to return to the address in question.

SITE INSPECTION:

On Friday, August 22, 2008, an agent from our offices in the region drove to the business located at 1015 S. Crocker Street, Unit S15, Los Angeles, California, arriving there at 11:55 A.M. The business is located on the 3rd floor of a medium sized three-story mall. The directory on the 1st floor showed the business name "REACTION" in unit S15.

Unit S15 is a small shop with glass panels in the front, located in the middle of the 3rd floor. There was a large "REACTION" sign above the entrance door and four large "REACTION" logos on the front glass panels.

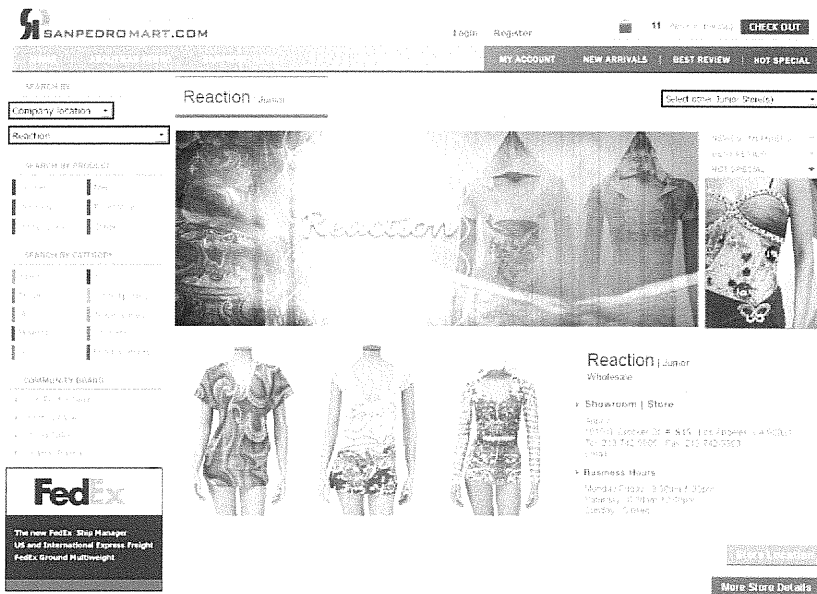
Our agent entered the store and obtained covert video of the interior. Several of the clothing items hanging on the walls were examined and all were found to have "RXN" cloth labels sewn on the inside of the garments and "REACTION" tags attached to the outside. It was not possible to get a clear covert video of these labels.

Upon making contact with an unidentified employee, our agent was told that the store was a wholesale outlet and that any of the clothing items on display could be purchased from between \$8.00 and \$12.00. During a conversation with the employee, the agent was told that they would be getting a new shipment of REACTION clothing from Las Vegas in two weeks. The employee advised that he did not have brochures or other literature, but did give our agent two business cards with "REACTION" in large letters on both of them. One card, which is believed to be the owner's, had the name Gavin Lee on it, with the Email address, reactionwear@hotmail.com. The other card had the Website www.fashiongo.net/reaction on it, with the Email address, reaction@fashiongo.net.

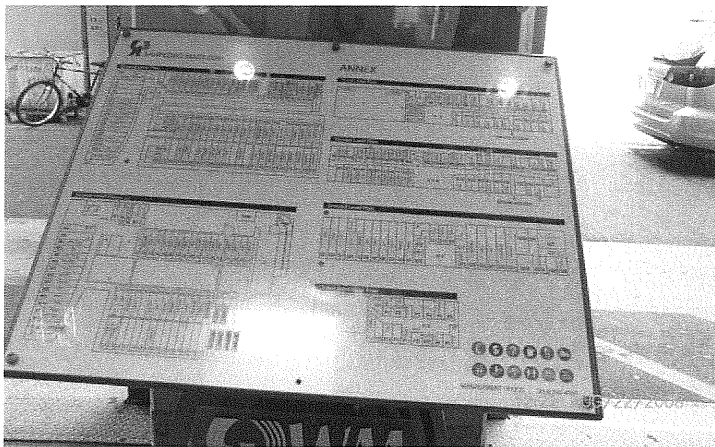
INTERNET SCAN:

A search for a corporate Website was conducted and we found no current presence for the company. The company has an Email address of reactionwear@hotmail.com. We found that the company appears to be selling and advertising their products on secondary sites at this time as well. We have provided two links to other domains selling the REACTION line at this time:

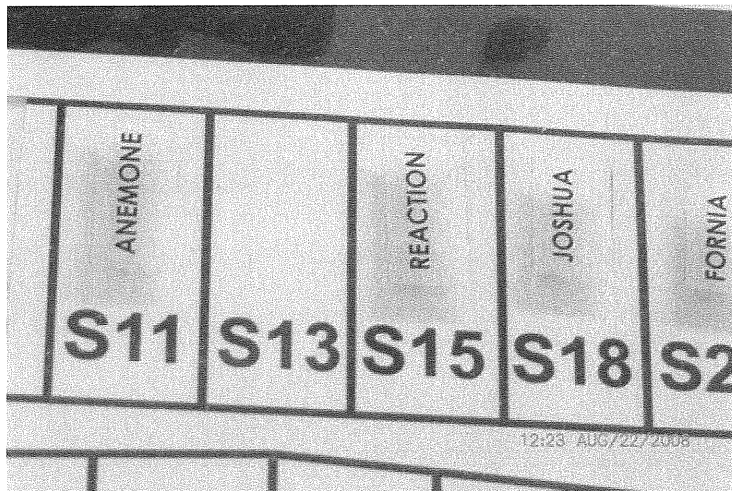




SITE PHOTOS:



BUILDING DIRECTORY:



CLOSE UP SHOWING STORES USE OF REACTION:



ORDER PROFILE:

The site was accessed from an account that was set up in the past. An order similar to the past order was placed. We were advised that the order was processed and that our credit card had been charged. We found that the order is pending shipment at this time.

CLOSING REMARKS:

As directed, we conducted an investigation of the Website in question. We registered and placed an order. A local agent was sent to the address used by the company in question. We found that they are using the REACTION identity for their store and on their labels and price tags. We

secured video of the inside of the store as well as photos of the use outside the store and on the storefront. We secured business cards with use of the identity REACTION and noted that our order is being processed. Once we receive the goods in question, we will forward them to counsel for review.

Please feel free to contact the undersigned with any questions.

Very truly yours,

SGW:rcs

Stephen G. Ward